

# **BOARD OF ZONING APPEALS**

## **Minutes**

**APRIL 22, 2003**

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m. on April 22, 2003, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance:

JAMES RUANE, ERMA MARKHAM, BICKLEY FOSTER, RANDY PHILLIPS, JAMES SKELTON.

The following Board members were absent:

JOHN ROGERS

SHARON DICKGRAFE -- Law Department present

J. R. COX -- Office of Central Inspection present.

The following Planning Department staff members were present:

SCOTT KNEBEL Assistant Secretary,

LISA ESTRADA, Recording Secretary.

**RUANE:** Item #1, March 25, 2003 BZA meeting minutes.

**FOSTER moves, SKELTON seconds to approve March 25, 2003 BZA meeting minutes.**

**Motion Carries 5-0.**

**RUANE:** Item #2, BZA2003-00010, variance request to reduce side yard setback for an accessory structure on a key lot from 25 feet to 15 feet. The applicant is Tony L. Pearce Revocable Trust. General location is the northeast corner of Keith Street and Keith Court.

**KNEBEL, Planning staff:** Presents staff report and slides. Staff recommends approval, subject to conditions, in the following report:

### **SECRETARY'S REPORT**

**CASE NUMBER:** BZA2003-00010

**OWNER/APPLICANT:** Tony Lee Pearce Revocable Trust c/o Tony L. Pearce

**REQUEST:** Variance to Section III-D.7.e.(5) of the Unified Zoning Code to permit a 15-foot street side setback for an accessory structure on a key lot

**CURRENT ZONING:** "SF-5" Single Family

**SITE SIZE:** 0.25 Acres

**LOCATION:** Northeast corner of Keith St. & Keith Ct. (1970 Keith Ct.)

**JURISDICTION:** The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

**BACKGROUND:** The applicant is requesting a variance to Section III-D.7.e.(5) of the Unified Zoning Code to permit a 15-foot street side setback for an accessory structure on a key lot. The subject property

is located on the northeast corner of Keith St. and Keith Ct. at 1970 Keith Ct. The subject property is zoned “SF-5” Single Family and is developed a single family residence.

The applicant proposes to construct a 24-foot by 24-foot detached garage in the northwest corner of the subject property as illustrated on the attached site plan and lot illustrations. As stated in the attached letter, the applicant proposes to locate the garage in the northwest corner of the subject property in order to preserve as much of the back yard as possible, to line up the garage with the side wall of his house, and to preserve the view of his back yard from the adjoining property to the north. Were the subject property not a key lot, the proposed detached garage would be permitted with a 10-foot rear setback and a 15-foot street side setback.

Section II-B.7.k. of the Unified Zoning Code defines a key lot as, “a corner lot adjoining two or more non-corner (interior or through) lots.” Since the adjoining property to the north is a non-corner (interior) lot, Section III-D.7.e.(5) of the Unified Zoning Code requires accessory structures on the subject property to meet the front building setback of the adjoining property to the north. For the subject property, this requires a 25-foot street side setback for accessory structures. The only method provided by the Unified Zoning Code to reduce this 25-foot building setback requirement is a Variance. Therefore, the applicant has requested a Variance of Section III-D.7.e.(5) of the Unified Zoning Code to permit a 15-foot street side setback for an accessory structure.

#### **ADJACENT ZONING AND LAND USE:**

NORTH	“SF-5”	Single family
SOUTH	“SF-5”	Single family
EAST	“SF-5”	Single family
WEST	“SF-5”	Single family

**UNIQUENESS:** It is the opinion of staff that this property is unique, inasmuch as the interior lot to the north that adjoins the subject property has a curved front lot line that curves inward toward the interior of the key lot. This is an unusual lot configuration involving a key lot. More commonly, the side lot line of a key lot is extended as the front lot line of the adjacent interior lot.

**ADJACENT PROPERTY:** It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the house on the adjacent property to the north is oriented such that the front of the house faces to the northwest due to the curved front lot line. Such an orientation of the house combined with the curvature of the street alleviates the potential negative impact of having two structures along the street with significantly different setbacks, since the proposed garage will be aligned with the structures on the straight portion of the street as well as with the structures on the curved portion of the street.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the sign regulations will constitute an unnecessary hardship upon the applicant, inasmuch as requiring the proposed garage to be set back 25 feet will considerably decrease the size of the backyard on the subject property without any corresponding benefit to the public good.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the proposed garage will be designed and constructed in the same manner as the house on the subject property and therefore will be harmonious with the development of the neighborhood.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Code inasmuch the intent of Section III-D.7.e.(5) of the Unified Zoning Code is to prevent accessory structures from protruding in front of principal structures along a street. Since the street is curved in this area, allowing a Variance to place the proposed garage closer to the street will not have the impact of the accessory structure protruding in front of the principle structures along the street.

**RECOMMENDATION:** It is staff's opinion that the variance requested is appropriate. Should the Board determine that the five conditions necessary for granting the variance exists, then it is the recommendation of the Secretary that the variance be GRANTED, subject to the following conditions:

1. The street side setback for one accessory structure on the subject property shall be reduced from 25 feet to 15 feet.
2. The accessory structure shall be limited to a 24-foot by 24-foot garage that shall be located on the subject property in general conformance with the approved site plan.
3. The accessory structure shall have the same vertical siding, same color of shingles, same roof pitch, and same paint scheme as the principal structure.
4. The applicant shall obtain all permits necessary to construct the garage, and the garage shall be erected within one year of the granting of the variance, unless such time period is extended by the Board.
5. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

**FOSTER:** Scott, what in general is your experience and policy about having a 15-foot setback for a driveway like that with a sidewalk on the outside?

**KNEBEL:** As far as the policies of the City of Wichita are concerned about the street yard setback in this zoning district, absent the property being a key lot, 15 feet is the standard setback that is required. I realize a 15 foot drive is not going to be sufficient to provide spacing for parking cars without encroaching on the sidewalk. That's something the applicant will have to consider when they take this approach that they will not be a usable drive. If they do park over the sidewalk, police will come out issue tickets. But as far as the standard setback, it is 15 feet except for a key lot.

**FOSTER:** When you do a C.U.P. or anything like that do you put any specials things on like, if it's 5 feet do you require to be back 18 or 20 if a person puts in a garage?

**KNEBEL:** I don't recall ever seeing a C.U.P. that has that particular regulation. I have seen plats that have 20 foot street side setbacks for corner lots for that purpose, but I don't recall ever seeing a C.U.P. that's done that.

**FOSTER:** Would you agree that 15 feet is not an adequate standard to guarantee that vehicles would not be hanging over the sidewalk?

**KNEBEL:** I agree that you can't park a vehicle in 15-feet. They're all longer than that. Any vehicle parked in front of this garage would not be parked legally.

**FOSTER:** Thank you.

**PHILLIPS:** The drawing shows that the garage is 16 feet back, which is the standard size for a compact car/stall under the zoning ordinances.

**RUANE:** Scott, if I understood you correctly, you mentioned consideration of view out concerns for crowding of views, and when you referred to maybe one window would have it's view changed or impacted by this, is that a window on the Whipple's property?

**KNEBEL:** Yes, on the neighboring property. What I was referring to, this is the neighboring property, you can see the primary view is away from the garage. From what I remember, there's one or two windows on this side that would look out in that direction and they're already viewing the back yard.

**RUANE:** Should you require this garage to be setback per code, would that create a greater burden on the Whipple's?

**KNEBEL:** I think the applicant stated that in their application. If the garage is setback another 10 feet, then it could have a worse impact on adjoining property than it would be in this location here.

**TONY PEARCE, 1970 N Keith, Applicant:** I have spoke to the Whipple's who own the house right behind me, because it's the only house that it involves, and I've been in their house looking out the windows and they expressed their concern that they would prefer I put on the 15 foot setback also because that way it will, looking out the windows, they won't be looking into the side of a garage. As far as parking, basically what I'm going to use the garage for is I have a sports car that gets driven once a month. That's going to be parked in there and woodworking equipment. It's not going to be a main garage. It's going to be used to house that car and woodworking equipment.

**FOSTER:** Mr. Pearce, as Mr. Phillips has pointed out the drawing does say 16 feet back. That's your intention right not 15 feet?

**PEARCE:** I want it lined up right with the house. I think it's 15 foot 9 inches. That's the intention to line it up with the house.

**FOSTER:** What if it were 18 feet in order to reduce the possibility vehicles hanging over the sidewalk, you lose some of your backyard right? What else would it do?

**PEARCE:** Other than being off set a little bit from the house that's pretty much it.

**MARKHAM:** I think the second comment was that it would obstruct the neighbor's view a little more.

**PEARCE:** It would be additional feet.

**MARKHAM:** Mr. Pearce, what impact have you thought that this may have on resale value of your property as far as the parking problem?

**PEARCE:** I would think that the detached garage would help the resale. I could attach it and come within 20 feet of the back property instead of 10 feet and it would be lined up with the house. If I did that it would take away the patio area. I would have to take the patio door out. I would think it would enhance the value.

**PHILLIPS:** The width of the driveway do you intend to put up?

**PEARCE:** I had a couple of bids. Whatever they need for standard. I suggested 10. I think one of the people put down 14 foot. It's only going to be used to get a car in once in awhile, and I don't know what the standard other than for a double car. I don't want any wider than 14 feet.

**FOSTER:** Mr. Chairman, I feel somewhat compelled to vote for this for the 15 feet, only because it's the policy of the City but I think it's a poor policy to allow people to go 15 feet then require they can't hang over the sidewalk either. I think it's a policy the City should look and consider if it's a proper balance between public good and a private right. I would hope he would line up with his house even though he's asked for 15 feet and I'm prepared to vote for it. I'd rather not make the motion.

**PHILLIPS MOVES MARKHAM SECONDS THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT IN THE SECRETARY'S REPORT FOR BZA2003-10.**

**SKELTON:** I will vote in favor for this request, I believe it meets the criteria.

**RUANE:** I would say that Bickley's comments are well taken. While I think that this plan and the staff recommendation is a good solution for Mr. Pearson's particular interest, I wonder if there could be a problem down the road with subsequent property owners wanting to use that driveway to park a vehicle and get a ticket by the police for having it hang out over the sidewalk. Do I understand correctly that there is another garage?

**PEARCE:** Yes, the main garage.

**RUANE:** I think that aesthetically lining this garage up with the side of the house is going to be a real positive for everybody in the neighborhood in terms of reduction of any visual clutter that might be caused by adjusting it beyond the 15.9 or whatever the standard is. I'm in favor. I weigh all those in a balance.

**MARKHAM:** One thing that they brought out in the report is the reason this was occurring on this particular key lot is because of the curving of the street and most key lots do not have that curve and he would not have that problem with the setback come into effect. I think the way that street curves from the corner house that this has caused this problem to occur.

**MOTION carries 5-0, and the Board adopts the following resolution:**

**BZA RESOLUTION NO. 2003-00010**

**WHEREAS,** Tony Lee Pearce Revocable Trust, c/o Tony L. Pearce (owner/applicant) pursuant to Section 2.12.590.B, Code of the City of Wichita, requests variance to Section III-D-7.e. (5) of the Unified Zoning Code to permit a 15-foot street side setback for an accessory structure on a key lot zoned "SF-5" Single-family Residential and legally described as follows:

Lot 14, Block E, Jamesburg Addition, Wichita, Sedgwick County, Kansas. Generally located at the northeast corner of Keith Street and Keith Court (1970 Keith Ct.).

**WHEREAS,** proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

**WHEREAS,** the Board of Zoning Appeals did, at the meeting of April 22, 2003, consider said application; and

**WHEREAS,** the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance

under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

**WHEREAS**, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that this property is unique, inasmuch as the interior lot to the north that adjoins the subject property has a curved front lot line that curves inward toward the interior of the key lot. This is an unusual lot configuration involving a key lot. More commonly, the side lot line of a key lot is extended as the front lot line of the adjacent interior lot.

**WHEREAS**, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the house on the adjacent property to the north is oriented such that the front of the house faces to the northwest due to the curved front lot line. Such an orientation of the house combined with the curvature of the street alleviates the potential negative impact of having two structures along the street with significantly different setbacks, since the proposed garage will be aligned with the structures on the straight portion of the street as well as with the structures on the curved portion of the street.

**WHEREAS**, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the sign regulations will constitute an unnecessary hardship upon the applicant, inasmuch as requiring the proposed garage to be set back 25 feet will considerably decrease the size of the backyard on the subject property without any corresponding benefit to the public good.

**WHEREAS**, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variance would not adversely affect the public interest, inasmuch as the proposed garage will be designed and constructed in the same manner as the house on the subject property and therefore will be harmonious with the development of the neighborhood.

**WHEREAS**, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not oppose the general spirit and intent of the Code inasmuch the intent of Section III-D.7.e.(5) of the Unified Zoning Code is to prevent accessory structures from protruding in front of principal structures along a street. Since the street is curved in this area, allowing a Variance to place the proposed garage closer to the street will not have the impact of the accessory structure protruding in front of the principle structures along the street.

**WHEREAS**, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that variance to Section III-D-7.e. (5) of the Unified Zoning Code to permit a 15-foot street side setback for an accessory structure on a key lot zoned “SF-5” Single-family Residential and legally described as follows:

Lot 14, Block E, Jamesburg Addition, Wichita, Sedgwick County, Kansas. Generally located at the northeast corner of Keith Street and Keith Court.

**The variance is hereby GRANTED, subject to the following conditions:**

1. The street side setback for one accessory structure on the subject property shall be reduced from 25 feet to 15 feet.
2. The accessory structure shall be limited to a 24-foot by 24-foot garage that shall be located on the subject property in general conformance with the approved site plan.
3. The accessory structure shall have the same vertical siding, same color of shingles, same roof pitch, and same paint scheme as the principal structure.
4. The applicant shall obtain all permits necessary to construct the garage, and the garage shall be erected within one year of the granting of the variance, unless such time period is extended by the Board.
5. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

**ADOPTED AT WICHITA, KANSAS, this 22nd DAY of APRIL, 2003.**

**RUANE:** Item #3 report from OCI.

**COX:** Nothing to report at this time.

**Meeting adjourns at 1:53 pm.**